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WESTERN DISTRICT OF MICHIGAN
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**UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

BRADLEY KEITH SLEIGHTER,

Plaintiff,

Case No. 1:12-cv-1008

Honorable Judge:
GORDON J. QUIST

v.

KENT COUNTY, by and through the
KENT COUNTY JAIL ADMINISTRATION,

Defendants.

EXPEDITED CONSIDERATION REQUESTED
OF

MOTION AND BRIEF IN SUPPORT OF LEAVE OF COURT TO FILE A
SECOND AMENDED COMPLAINT

AND

RENDER MOOT HIS MOTION FOR LEAVE OF COURT TO FILE A
SUPPLEMENT TO HIS COMPLAINT

LEGAL STANDING IN SUPPORT OF EXPEDITED CONSIDERATION
AND HIS POSITION IN SUPPORT OF THE MOTION

The Plaintiff relies on Local Civil Rule 7.1(e), which states: "Where the relief requested
by a motion may be rendered moot before the motion is briefed in accordance with the schedules

41 set forth herein, the party shall so indicate by inserting the phrase "EXPEDITED
42 CONSIDERATION REQUESTED," in boldface type, below the case caption, and shall identify
43 in the motion the reason expedited consideration is necessary".

44 Plaintiff's Motion to expedite consideration of his Motion to Leave to File a Second
45 Amended Complaint should be freely given as it will render moot his Motion for Leave of Court
46 to Supplement Complaint (Doc. #41), and will not be prejudicial nor produce any undue burden
47 upon the Defendants; it will benefit them equally, as well.

48 Though, Local Rule 7.1(e), states that this provision is to prevent a motion from
49 becoming rendered moot as a result of other actions before the Court being ruled on first, the
50 Rule is not written in stone, as to be so rigid, that it's granting would be considered a procedural
51 error, nor would its granting prejudice the Defendant's position in any of the current cases before
52 the Court. The Honorable Court has full discretion as to when and how they chose to apply the
53 Rule.

54 Plaintiff agrees that he does not have any current action before the Court that would
55 render this Motion moot if this Motion was not granted, but he has requested this expedited
56 consideration to allow, and grant the Magistrate Judge, who has a unique position to appreciate
57 the Plaintiff's efforts to conserve Judicial Economy, and grant this Motion for Leave of Court to
58 File a Second Amended Complaint; to be ruled on, first, so that if leave is granted his Motion for
59 Leave to Supplement Complaint would be unnecessary since his Second Amended Complaint
60 will incorporate the information he seeks to supplement his complaint with. Therefore, ruling on
61 his Motion for Leave to Supplement Complaint, would serve no purpose.

63 **BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR LEAVE OF**
64 **COURT TO FILE A SECOND AMENDED COMPLAINT**

65
66 **ARGUMENT**

67 **The Efficient Administration of Justice Requires That Plaintiff be Given Leave to File a**
68 **Second Amended Complaint**

69 Federal Rule of Civil Procedure 15(a) requires that leave to file an amended complaint be
70 "freely given when justice so requires." This standard is readily met here, as the more detailed
71 description of issues the Plaintiff brings to bar in the Second Amended Complaint narrows the
72 scope of the issues presented in this litigation and will prevent the Court's time from being
73 wasted at trial; preserving Judicial Economy.

74 **Defendants Will Not Suffer Substantial Prejudice**

75 **There Is No Other Reason Plaintiff Should Not Be Given Leave to Amend**

76 The U.S. Supreme Court determined that "[i]n the absence of . . . undue delay, bad faith or
77 dilatory motive . . . undue prejudice . . . futility of amendment, etc.--the leave sought should . . .
78 be 'freely given.' " *Foman v. Davis*, 371 U.S. 178, 182 (1962). The Sixth Circuit applies a
79 balancing test of these factors, which turns on *substantial prejudice* to the opposing party. *See*,
80 *e.g.*, *Lawson v. Truck Drivers, Chauffeurs & Helpers, Local Union 100*, 698 F.2d 250, 256 (6th
81 Cir. 1983); *Hageman v. Signal L.P. Gas, Inc.*, 486 F.2d 479, 484 (6th Cir. 1973).

82 No such prejudice exists here. The facts described in the (Proposed) Second Amended
83 Complaint are well known to Defendants, because they have addressed a variety of Plaintiff's
84 filings and disposed Plaintiff, addressing his Original Complaint.

85 Similarly, none of the other *Foman* factors are present. The Sixth Circuit has allowed
86 amendments even after the expiration of discovery and after the time for amended pleadings in
87 the scheduling order. *See, e.g., United States v. Wood*, 877 F.2d 453, 456 (6th Cir. 1989)
88 (allowing United States to add a claim fourteen months after suit was filed, after discovery had
89 closed, and three weeks before trial). The Second Amended Complaint does not add any new
90 causes of action, but rather more clearly describes the issues at bar, and which the Defendants
91 seem to not understand, what the causes of action, identified in the original complaint, are at bar.

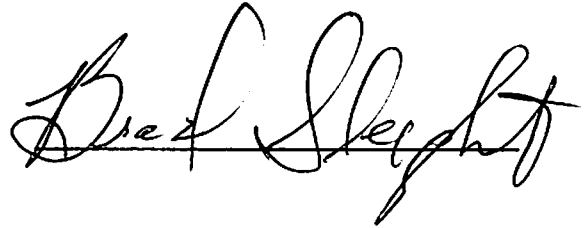
92
93 None of the factors that may militate against granting a motion to amend is present in this
94 case. Thus, there should be no undue delay in Plaintiff's request to amend. The newly alleged
95 facts were entirely unknown – and, in fact, not in existence – at the time the Plaintiff filed his
96 original complaint. Plaintiff is not seeking the amendment in bad faith or with a dilatory motive.
97 The interests of justice and judicial economy will undoubtedly be served by having all
98 allegations properly before the Court as set forth in Plaintiff's proposed Second Amended
99 Complaint. The amendment is narrowly tailored to reflect the present circumstances and
100 Plaintiff's present understanding of the case. In so doing, the litigation can more effectively
101 proceed on its merits; *per se*. Defendants will not suffer any undue prejudice by virtue of the
102 Court's allowance of the proposed amendment. The determination of whether prejudice would
103 occur often includes assessing whether allowing an amendment would result in additional
104 discovery, cost, and preparation to defend against new facts or new theories. Defendants cannot
105 be prejudiced, or caught off guard, by the new facts alleged by the Plaintiff in his proposed
106 amendment, since the Defendants have first-hand knowledge of the roles that they played in the
107 transactions at issue. The proposed amended complaint does not involve the addition of any new

defendants, set forth any new claims, or raise any new legal theories. No prejudice would result to Defendants in allowing the amendment under these circumstances.

CONCLUSION

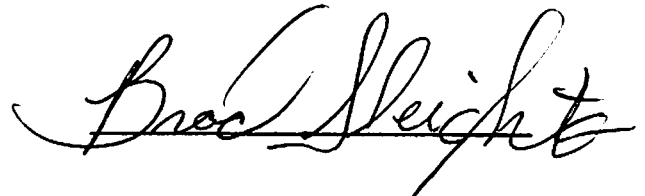
For the above reasons, Plaintiffs' Motion for Leave to File a Second Amended Complaint should be granted. Accordingly, in the interest of justice, this Court should grant Plaintiff's motion for leave to file the proposed amended complaint, with expedited consideration. The granting of this motion is particularly appropriate here, given the clear absence of any substantial reason to deny leave to amend.

Respectfully Submitted: August 28, 2013.



CERTIFICATE OF SERVICE

I, the Plaintiff, certify that I have delivered to the Defendant's Attorney of record, Varnum LLP, a true and correct copy of this Brief by electronic means through the internet to the email address of record, pigreenwald@varnumlaw.com and also to the U.S. District Court for the Western District of Michigan on this 30th, day of August, 2013



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